(25)

FILED
MAR 3 1944
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 723

CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,

Petitioners,

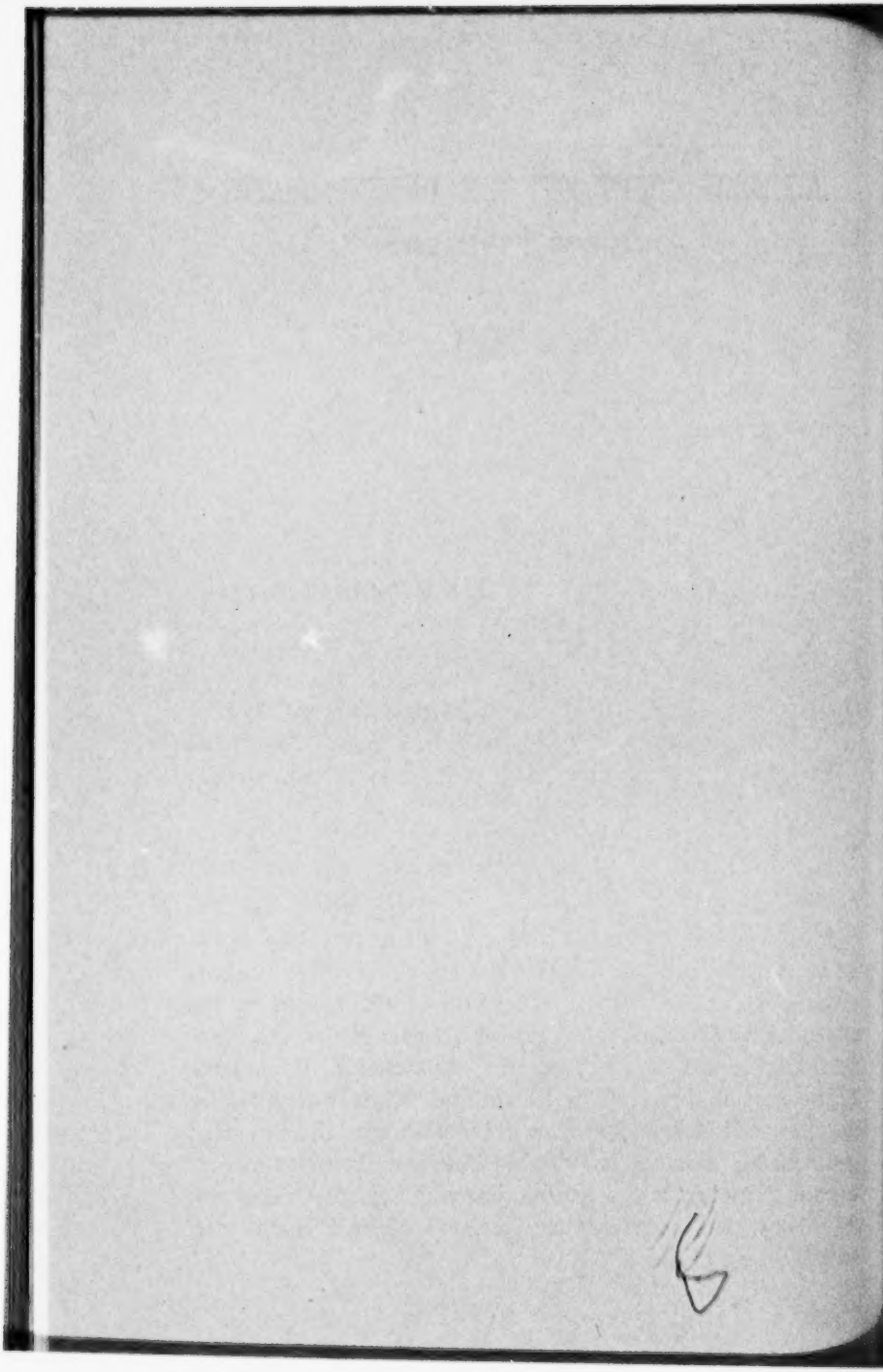
vs.

NATURAL SODA PRODUCTS COMPANY, A CORPORATION.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA.

MOTION FOR LEAVE TO PROCEED ON TYPEWRITTEN RECORD.

RAY L. CHESEBRO,
City Attorney
S. B. ROBINSON,
Chief Assistant City Attorney for Water and Power
SAMUEL POORMAN, JR.,
Assistant City Attorney
A. E. CHANDLER,
Special Counsel,
Counsel for Petitioners.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 723

CITY OF LOS ANGELES, A MUNICIPAL CORPORATION, DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES, *Petitioners,*

vs.

NATURAL SODA PRODUCTS COMPANY, A CORPORATION.

Respondent.

MOTION FOR LEAVE TO PROCEED WITH PETITION FOR WRITS OF CERTIORARI ON TYPEWRITTEN TRANSCRIPT OF RECORD AND ORIGINAL EXHIBITS ON FILE.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners above named, having filed in the office of the Clerk of this Honorable Court the entire record on appeal to the Supreme Court of the State of California in the above-entitled consolidated causes (consisting of the typewritten Clerk's Transcript, the typewritten Reporter's Transcript, and the original Exhibits), all duly certified by the Clerk of the court last named, together with their printed petition for issuance out of this Court of its writs of certiorari, directed to the said Supreme Court of California, to review the judgment and decision of said last-named court in said causes;

Come now said petitioners and move that this Court may make its order granting to said petitioners leave to proceed with said petition for said writs of certiorari upon their said petition, brief and appendices and upon said typewritten transcripts and said original exhibits without awaiting the printing of said record conformably to the rules of this Honorable Court.

This application for leave to proceed as aforesaid is made upon the following grounds, to wit:

(1) That the said typewritten transcript consist of approximately 5,000 pages comprising 9,732 folios.

(2) That said original exhibits are 152 in number, 77 thereof being the exhibits of respondent (plaintiff below), and 75 thereof being the exhibits of petitioners (defendants below). That many of said exhibits consist of numerous pages of statistical data, one of the most important thereof containing 138 pages of figures. Other of said exhibits are photographs, maps, and plans that will have to be reproduced in facsimile, or reduced facsimile, by the photographic and photostatic processes.

(3) That petitioners are advised by the Clerk of this Court that it will take at least one month to print the said record herein, and that the cost of such printing will be in the neighborhood of $10,000.

(4) That, for the presentation of the points upon which petitioners rely in their said petition for the issuance of said writs of certiorari, said record need have included no more than one-seventh, and probably less, of said Reporter's Transcript (which comprises by far the larger part of said 9,732 folios), while said Clerk's Transcript can likewise be greatly curtailed, though in a less degree than said Reporter's Transcript.

(5) That if said petition for said writs of certiorari be granted, suitable arrangements for the printing of said

record (or of so much thereof as it may be necessary to print), can be made at that time, and petitioners hereby undertake to make such arrangements accordingly.

(6) That commencing on December 13, 1943, petitioners called to the attention of counsel for respondent the rule of this Court requiring that such records be curtailed and apparently favoring an agreed statement where practicable. This was done by letter wherein petitioners indicated in general terms the portions of said record to be omitted. Under date of December 17, 1943, counsel for respondent replied thereto by letter as follows: "We are, of course, perfectly willing to omit immaterial matter, but, manifestly, we are in no position to make any specific agreement in this regard until we are fully advised as to the position you intend taking. If you would care to forward us a copy of your petition this might afford us a better basis for discussion and consideration of your specific request."

(7) On December 23, 1943, petitioners again addressed a letter to counsel for respondent, advising them that petitioners had listed the passages in the record below that they desired to have included in the record on certiorari, for the purpose of the praecipe that they purposed filing with the Clerk of the Supreme Court of California, and they therein suggested that they would furnish such list to counsel for respondent and that thereupon counsel should advise petitioners what additional portions of the record respondent might desire to have certified to this court, in order that the necessary copying could include in proper order all portions required by both parties. That in reply thereto counsel for respondent advised petitioners, by letter dated December 28, 1943, that, unless furnished in advance with a copy of said petition for said writs of certiorari, they would have to insist upon the entire record being certified to this Court.

(8) That on December 27, 1943, Samuel Poorman, Jr., one of counsel for petitioners, completed a draft of said petition and submitted the same to the other counsel for petitioners. That he proceeded at once with the writing of said supporting brief, but his work thereon was interrupted for practically the entire month of January, 1944 when he was otherwise engaged in Washington, D. C., and in Salt Lake City, Utah. That on February 9, 1944, a copy of petitioners' brief, in typewritten form but in substantial identity with said brief as filed herein, was forwarded to counsel for respondent at San Francisco, California. That on February 11, 1944, a copy of said petition, in typewritten form but in substantial identity with said petition as filed herein, was also forwarded to counsel for respondent, at San Francisco, California.

(9) That on February 25, 1944, petitioners served upon counsel for respondent a proposal for the omission by stipulation, from the record to be printed herein, of by far the greater part of said Reporter's Transcript, and on February 26, 1944, likewise served upon counsel for respondent a proposal for the like omission by stipulation of considerable portions of said Clerk's Transcript and most of said exhibits.

(10) That on February 28, 1944, counsel for respondent notified petitioners by letter that they would require that "the whole of the Reporter's Transcript and the Clerk's Transcript on appeal in the State Court should be printed" and also that if "the original exhibits [had been] forwarded pursuant to rule 10, subdivision 4 * * * we shall naturally be willing to agree to the use of such original exhibits to the extent that such may be proper."

(11) That thereafter on said February 28, 1944, petitioners telegraphed the Clerk of this Court advising him of respondent's refusal to abridge the record to be printed

(except as indicated above in respect of the original exhibits), and requesting the immediate printing of both the Clerk's Transcript and the Reporter's Transcript, and, if necessary, of said exhibits, and likewise requesting said Clerk to obtain the order of this Court for a sufficient enlargement of time to permit of such printing and of the service of said record on respondent thereafter.

Wherefore, petitioners pray that this their motion for leave to proceed with their said petition for said writs of certiorari upon said typewritten transcripts of the record and upon said original exhibits, all as filed herein, be granted, upon condition, however, that in the event said writs of certiorari be issued, suitable arrangements in respect of the printing of the record be thereupon made by petitioners.

Dated at Los Angeles, California, this 29th day of February, 1944.

CITY OF LOS ANGELES,
A Municipal Corporation, and
DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES,
A Department Created under the Charter of Said City,
Petitioners,
By RAY L. CHESEBRO,
City Attorney;
S. B. ROBINSON,
Chief Assistant City Attorney for Water and Power;
SAMUEL POORMAN, JR.,
Assistant City Attorney;
A. E. CHANDLER,
Special Counsel;
By SAMUEL POORMAN, JR.,
Counsel for Petitioners.